Section 101 (iii) shows that an executor or administrator can be required by the Court to exhibit an inventory or account and does not suggest that any application by a third person is necessary. It is clearly the duty of a Court to see that the executor or administrator complies with his statutory obligation to exhibit the same.

Under the Probate and Administration Enactment, "Court" includes Registrars where they are empowered to act; and under the "Rules for non-contentious business in the Supreme Court and in its probate jurisdiction" (Volume 1 Rules, p. 27), made under the Rule Committee (Supreme Court) Enactment (Cap. 13) in the Schedule of Forms thereto, p. 52 (v), appears Form 17 "Notice to file accounts" which is issued under Section 101 of the Probate and Administration Enactment, and that form is shown to be signed by the Registrar, and not by order of a Judge.

Under section 5 (ii) of Cap. 13, "In the event of inconsistency or conflict between any written law and a rule lawfully made under this Enactment the provisions of the rule shall prevail." Form 17 is part of the rules, and since this form is shown to be signed by a Registrar, this must be taken to empower him to issue the requisition under section 101 (iii) of the Probate and Administration Enactment, which might otherwise be held to be the function of a judge.

No form of "Notice to exhibit an inventory" appears in these rules, but as the power to issue this requisition is contained in the same section, viz., section 101 (iii) it would be unnecessary to set out a special form.

Rule 92 (p. 40) provides that the forms given in the schedule are intended as specimens only, and must be altered to meet the requirements of the case where this is necessary, and that is what has been done in the present case.

I am satisfied that the appellant was properly convicted of the offence with which he was charged, and that the legal objections raised by *Mr. Reid,* seeking to show (a) that the obligations of a "foreign" executor whose probate has been re-sealed, are any less than those of executors who receive their grant direct from a Federated Malay States Court, and (b) that the procedure in issuing the Notice to Exhibit an inventory, was defective and improper, cannot be supported.

The appeal is dismissed.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

Howes, J.

June 28, 1940.

SAKINAH ..... **Plaintiff**

vs.

KUA TEONG HOW ..... **Defendant.**

[PERAK ORIGINATING SUMMONS No. 37 of 1940]

Malay Reservations Enactment, 1913, Section 8—Limitation Enactment 1896, Section 19 (ii) Articles 101 and 114—power of attorney granting right or interest in reserved land void—chargee entering into possession a trespasser—Period of limitation.

Land subject to the Malay Reservations Enactment 1913, was charged to the defendant. The charge was repayable on the 8th June, 1920. The chargor, on the 10th June 1918, also granted a power of attorney to the defendant which purported to give him a right or interest in the land. The defendant went into possession of the charged land receiving the produce therefrom, and had remained in possession ever since. The chargor died on the 12th July 1921. On an application by way of Originating Summons for an order on the Collector of Land Revenue to record a memorial discharging the charge:

Held, (i) that the power of attorney was null and void and that the defendant in entering into possession of the charged land was a trespasser;

(ii) that the defendant's only claim was as chargee to recover his debt and that this was statute-barred after 12 years.

Cases referred to:

(*1*) *Idris v. Ng Ah Siew* 4 M.L.J. 257; (1935) F.M.S.L.R. 70

(*2*) *Gan Khor v. Soan* 4. M.L.J. 158; (1935) F.M.S.L.R. 39.

S. M. Sharma for Plaintiff.
Chin Swee Onn for Defendant.

Howes, J.—In this summons the plaintiff applies for an order that the Collector of Land Revenue, Telok Anson, be directed to record a memorial discharging Charge Presentation No. 261 of 1918 over the lands held under E.M.R. Nos. 834 and 846 respectively in the mukim of Utan Melintang.

Five issues have been framed by the plaintiff's advocate, and after some discussion, were adopted by the Court.

The issues are:

1. Is the defendant barred from claiming any relief under the charge dated the 10th day of June, 1918, executed by Serawan binti Kerta Pawero in favour of the defendant having regard to the

provisions of Limitation Enactment (Cap. 18), section 19 (ii), and pleaded by the plaintiff.

2. Does the fact of the defendant being in possession of the charged land save the running of the time under section 19 (ii) of (Cap. 18).

3. Is the power of attorney dated the 10th day of June, 1918, null and void **ab initio** or not.

4. If not bad **ab initio** did it cease to be of force at any time if at all and if so when.

5. Is the possession of the charged land by the defendant legal.

Dealing firstly with issue No. 3, having regard to the decision of the Court of Appeal in *Idris v. Ng Ah Siew*[1], I hold that the power of attorney purported to give to the chargee a right or interest in the land of the Malay chargor, and as such was contrary to the provisions of section 8 (i) of the Malay Reservations Enactment, 1913 (Enactment 15 of 1913) which was in force at the date of the power of attorney (10th June, 1918), and consequently under section 13 of the same Enactment the dealing or attempt to deal in the land was null and void.

Issue No. 4.—Even if the power of attorney were not null and void *ab initio,* it ceased to be operative on the date of the death of the chargor, viz., on the 12th July, 1921. This, *Mr. Chin Swee Onn,* advocate for the chargee, admits.

Issue No. 2.—It is admitted that the defendant was and still is in possession of the land, but this, and the receipt of the produce of such land does not of itself save the running of the period of limitation under section 19 (ii) of the Limitation Enactment (Cap. 18). In the present case, since I hold that the power of attorney under which the chargee entered into possession was void, the chargee was, from the beginning, a trespasser. Moreover, the power of attorney did not expressly empower the chargee to enter into possession of the charged land. All it did was to appoint the chargee to "look after the coconut estates; to engage and discharge coolies as he thought fit; to sell coconuts when the trees are bearing."

Section 137 of the Land Code which allows a chargee to enter into possession, only applies to land held under grant, lease or certificate of title, and there was a similar provision under the Registration of Titles Enactment, 1911, which was in force at the date of the power of attorney (1918). But there was no provision under the Land Enactment, 1911, for a chargee to enter land held under the mukim register. Consequently, section 19 (ii) of the Limitation Enactment can have no application in the present case; and, clearly, that sub-section contemplated a lawful possession.

Issue No. 1.—I hold that the defendant is barred from claiming relief. The charge was repayable on the 8th June, 1920, and consequently under Article 101 of the second schedule to the Limitation Enactment, the defendant must claim within 12 years of the time when the money sued for became due.

Mr. Chin Swee Onn contended that under the Limitation Enactment, 1896, which was in force at the date of the charge, under Article 114 of the second schedule thereto, a mortgagee was allowed 60 years in which to claim for foreclosure and sale, from the time "when the money secured by the mortgage became due".

As was pointed out by Thomas, C.J., in *Gan Khor v. Soan*[2] "There is no such thing as a mortgage of land known to the law of the Federated Malay States. Charges alone are recognised. The rights arising from a charge are contained in the Land Code."

The above Article 114 has been deleted from the second schedule to the present Enactment.

I hold that the period of limitation for a chargee to recover his debt is 12 years, and the present defendant's claim is statute barred.

I, accordingly, make the order applied for, in the terms of the summons, and order the defendant to pay the costs.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

CUSSEN, J.

July 4, 1940.

CHUAN HOO vs. PUBLIC PROSECUTOR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 24 of 1940]

Evidence recorded in another case—Arguments founded thereon—Validity of conviction.

A number of persons were charged with a similar offence and one of the cases was to be taken as a test case. Evidence was taken and the accused was convicted. He refused, however, to appeal. It was intended that the present case should now be the test case.

Instead of calling evidence, arguments were heard based upon the facts given in evidence in the previous case and the accused was convicted.